

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No.17

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte KENNETH J. SHEMANKSKE, II
and DOMINIC P. ANKERS

Appeal No. 2003-1347
Application No. 09/825,044

ON BRIEF

Before CRAWFORD, BAHR, and LEVY, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 11, which are all of the claims pending in this application.

The appellants' invention relates to an elevator control device (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Platt	5,284,225	Feb. 8, 1994
Sasao	4,924,416	May 8, 1990

The rejections

Claims 1 to 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Platt.

Claims 7 to 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Platt in view of Sasao.¹

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 13 , filed March 10, 2003) for the examiner's complete reasoning in support

¹ The appellants' brief contains a section entitled "Response to Drawing Objections." We will not address this portion of the brief as the propriety of drawing objections is not a matter properly before the Board but rather should have been timely addressed in a petition pursuant to 37 CFR § 1.181.

of the rejections, and to the brief (Paper No. 12 , filed January 21, 2003) and reply brief (Paper No. 14, filed April 22, 2003) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 1 to 6 under 35 U.S.C. § 102(b) as being anticipated by Platt. We initially note that to support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claims is found, either expressly described or under principles of inherency, in a single prior art references. Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

In support of the rejection, the examiner finds that Platt discloses:

An elevator door 1 is operated to open and close. Based on a detector 5 sensing of the door entry and adjacent hallway, the door is commanded to open and close by micro-controller 17. A field memory 23 and video memory 22 are provided with each floors image without passengers and based on present images the doors are commanded to open or close based on passenger or load determination. The storage allows the background images to be identified. As illustrated in figures 3a-3c a matrix 11 determines moving objects as well as stationary objects. Based on the detection, the doors are opened, closed or delayed from closing. [answer at pages 3 and 4].

Appellants argue that Platt does not disclose an analysis of a sequence of photographs or other representations at the door of the elevator which are compared to previous images. We do not agree. Platt clearly discloses at column 3, lines 37 to 42 and column 5, lines 15 to 27 that visual images or pictures are stored and compared on a frame by frame basis to determine whether the elevator door should open or close.

Appellants also argue that Platt includes infrared sensing which is not necessary in the appellants' invention. This argument is not persuasive because as the appellants' claims include the word "comprising" and are open ended, the claims do not exclude additional, unrecited elements. Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608 (Fed. Cir. 1997).

Appellants further argue that Platt fails to recognize the problem addressed by the appellants' invention. This argument is not persuasive because it is not necessary that the reference teach what the appellants are claiming, but only that the claims "read on" something disclosed in the reference. Kalman v. Kimberly-Clark Corp., 713 F.2d at 772, 218 USPQ at 789 (Fed. Ci. 1983).

Appellants further argue that Platt's device does not image areas adjacent the elevator door. We do not agree. Platt clearly images the areas adjacent to the elevator door as is depicted in Platt's figure 1. To the extent this argument relates to the argument set forth in the reply brief that Platt does not image spaces inside the

elevators, we note that whether Platt images space inside the elevator is not relevant to anticipation of claim 1, because claim 1 does not recite the images are taken of the inside of the elevator.

In view of the foregoing, we will sustain the examiner's rejection of claim 1. We will also sustain the examiner's rejection of claims 2 to 6 as these claims stand or fall with claim 1 because claims 2 to 6 have not been separately argued by appellants as required in 37 CFR § 1.192(c)(7) and (8)(iv), in effect at the time the brief was filed. Accordingly, we have determined that these claims must be treated as falling with claim 1. See In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987).

We turn next to the rejection of claims 7 to 11 under 35 U.S.C. § 103 as being unpatentable over Platt, appellants' admitted prior art and Sasao. As appellants do not argue any claims in particular, we select claim 9 as representative of the grouping and decide the appeal of this rejection on the basis thereof, with claims 7, 8, 10 and 11 standing or falling therewith. We note, at the outset, that claim 9 merely recites that the images from the camera may be stored on a replaceable storage medium. The images from Platt's imaging device are fully capable of such storage (note Platt's video memory 22) and appellants have not argued that this is not the case.

Appellants argue that the combined teachings of Platt and Sasao do not disclose a system whereby the area inside the elevator is imaged. This argument is not

persuasive because none of claims 7 to 11 recited that the area inside the elevator is imaged.

Appellants also argue that none of the references cited disclose imaging a cab sill and an entrance sill. We do not agree. As depicted in figure 1 of Platt, the cab sill and the entrance sill are imaged.

Appellants also argue that there is no teaching of using a series of pictures in a rapid fashion and drawing the conclusion relating to whether the door of an elevator is safe to open or close. This argument is not persuasive because none of claims 7 to 11 recite using a series of pictures in a rapid fashion. In regard to utilization of the recorded images to draw a conclusion relating to whether the door of an elevator is safe to open or close, we note that the claims are not directed to a determination of safety but only to controlling the operation of the elevator door based on the determination of differences between sequential images which is taught by Platt.

We have considered the affidavit of Richard Gregory which states:

I have observed a prototype of the invention to which the above captioned patent application is directed; and find that the invention described therein has solved a major problem in the elevator art, and that it provides an extremely efficient method of determining the presence of a person . . . or persons within the elevator doorway or adjacent thereto. [page 1 to 2]

It is not clear whether the Gregory affidavit has been submitted to address the anticipation of the invention or the obviousness of the invention. In stating that the appellants' invention solved a major problem in the elevator art, the affidavit appears to

be directed to the issue of the long felt need for the invention which is relevant to the obviousness of the invention only. However, establishing the long felt need requires objective evidence that an art recognized problem existed in the art for a long period of time without solution. The relevance of the long felt need and the failure of others to address the issue of obviousness depends on several factors. The need must have been a persistent one that was recognized by those of ordinary skill in the art. In re Gershon, 372 F.2d 535, 539, 152 USPQ 602, 605 (CCPA 1967)("Since the alleged problem in this case was first recognized by appellants, and others apparently have not yet become aware of its existence, it goes without saying that there could not possibly be any evidence of either a long felt need in the . . . art for a solution to a problem of dubious existence or failure of others skilled in the art who unsuccessfully attempted to solve a problem of which they were not aware."); Orthopedic Equipment Co., Inc. v. All Orthopedic Appliances, Inc., 707 F.2d 1376, 217 USPQ 1281 (Fed. Cir. 1983) (Although the claimed invention achieved the desirable result of reducing inventories, there was no evidence of any prior unsuccessful attempts to do so.).

The Gregory affidavit does not address whether the need for the appellants invention was a persistent one nor does it address whether there were prior unsuccessful attempts to address the need. Therefore, the affidavit is entitled to little weight. In sum, the affidavit is insufficient to overcome the strength of the evidence of obviousness in this case.

In light of the above, the rejection of claim 9, and claims 7, 8, 10 and 11 which fall therewith, is affirmed.

SUMMARY

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR §1.136(a).

AFFIRMED

MURRIEL, E. CRAWFORD
Administrative Patent Judge

JENNIFER, D. BAHR
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

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MATHEW R. P. PERRONE, JR.
210 SOUTH MAIN STREET
ALGONQUIN, IL 60102-2639

MEC/jg